

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KEITH ROSARIO,)
Plaintiff,) Civil Action No. 2:19-cv-01040
vs.) District Judge Robert J. Colville
EDWARD STRAWN, DONALD E.) Magistrate Judge Maureen P. Kelly
WAUGH, and CHRISTOPHER M. CAIN,)
Defendants.)

MEMORANDUM ORDER OF COURT

Currently pending before the Court are a Motion for Summary Judgment (ECF No. 126) filed by Defendants Edward Strawn, Donald E. Waugh, and Christopher M. Cain (collectively, “Defendants”) and a Cross-Motion for Summary Judgment (ECF No. 140) filed by Plaintiff Keith Rosario (“Plaintiff”). With respect to Plaintiff’s Cross-Motion for Summary Judgment, Magistrate Judge Maureen P. Kelly entered a Report and Recommendation (ECF No. 145) dated August 12, 2021 recommending that Plaintiff’s Cross-Motion be denied because it was untimely filed and because the claims on which Plaintiff seeks summary judgment are no longer pending in this action. August 12, 2021 Report and Recommendation 6-7, ECF No. 145. On September 24, 2021, Plaintiff filed timely Objections (ECF No. 151) to Judge Kelly’s August 12, 2021 Report and Recommendation, as well as Exhibits (ECF No. 152) in support of those Objections. With respect to Defendants’ Motion for Summary Judgment, Judge Kelly entered a Report and Recommendation (ECF No. 154) dated October 19, 2021 recommending that Defendants’ Motion be granted as to the sole remaining claim, specifically Plaintiff’s First Amendment retaliation claim at Count B, set forth in Plaintiff’s Second Amended Complaint (ECF No. 51). On November

17, 2021, Plaintiff filed timely Objections (ECF No. 157) to Judge Kelly's October 19, 2021 Report and Recommendation, as well as Exhibits (ECF No. 157-1 – ECF No. 157-25; ECF No. 158) in support of those Objections. On November 23, 2021, Defendants filed a Response to Plaintiff's Objections to Judge Kelly's October 19, 2021 Report and Recommendation.

With respect to dispositive matters, the reviewing district court must make a de novo determination of those portions of the magistrate judge's report and recommendation to which objections are made. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). “The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3). The United States Court of Appeals for the Third Circuit has explained that, “even absent objections to the report and recommendation, a district court should ‘afford some level of review to dispositive legal issues raised by the report,’” and has “described this level of review as ‘reasoned consideration.’” *Equal Employment Opportunity Comm'n v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987)).

Initially, the Court notes that Plaintiff's “Objections” to Judge Kelly's October 19, 2021 Report and Recommendation are identical to the arguments raised in his Cross-Motion for Summary Judgment, and further notes that such arguments are fully addressed in Judge Kelly's August 12, 2021 Report and Recommendation. In his Objections to the August 12, 2021 Report and Recommendation, Plaintiff asserts that certain of his claims against Defendants were not “waived.” Objections 1, ECF No. 151. As explained by this Court's September 30, 2020 Memorandum Order (ECF No. 99) and Judge Kelly's August 12, 2021 Report and Recommendation, the only claim currently pending at this stage of the proceedings is Plaintiff's First Amendment retaliation claim against Defendants at Count B. August 12, 2021 Report and

Recommendation 6-7, ECF No. 145; Mem. Order 16, ECF No. 99 (“Count B is the only remaining claim before this Court.”). Most of Plaintiff’s claims against the present Defendants were previously dismissed with prejudice, *see* Mem. Order 16-17, ECF No. 99, and the time for filing an amended complaint with respect to those that were dismissed without prejudice has long since passed, *id.* Accordingly, upon consideration of Judge Kelly’s August 12, 2021 Report and Recommendation and Judge Kelly’s October 19, 2021 Report and Recommendation, and following a de novo review of the relevant docket entries and the entire record in this matter, it is hereby ORDERED as follows:

The Court agrees with the well-reasoned analysis set forth in Judge Kelly’s August 12, 2021 Report and Recommendation, and the Court accepts and adopts Judge Kelly’s August 12, 2021 Report and Recommendation in its entirety as the opinion of the Court with respect to Plaintiff’s Cross-Motion for Summary Judgment. Plaintiff’s Objections to the August 12, 2021 Report and Recommendation are overruled, and Plaintiff’s Cross-Motion for Summary Judgment is denied. The Court also agrees with the well-reasoned analysis set forth in Judge Kelly’s October 19, 2021 Report and Recommendation, and the Court accepts and adopts Judge Kelly’s October 19, 2021 Report and Recommendation in its entirety as the opinion of the Court with respect to Defendants’ Motion for Summary Judgment. Plaintiff’s Objections to the October 19, 2021 Report and Recommendation are overruled, and Defendants’ Motion for Summary Judgment is granted.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: January 21, 2022

cc/ecf: All counsel of record

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